FILED
APR 30 19
HAROLD B. WILLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 729

JOSEPH SICILIANO,

Petitioner,

vs.

STATE OF ILLINOIS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

LATHAM CASTLE,
Attorney General of the State of Illinois,
Supreme Court Building,
Springfield, Illinois,
ROBERT C. NELSON,
State's Attorney of Lake County, Illinois,
Attorneys for Respondent.

JOHN L. DAVIDSON, JR.,
First Assistant Attorney General,
FRED G. LEACH,
WILLIAM C. WINES,
Assistant Attorneys General,
Of Counsel.

THE BUNTHORP-WARREN PRINTING COMPANY, CHICAGO [redacted] 56

INDEX.

	PAGE
Brief in Opposition to Petition for Certiorari.....	1
This court is without jurisdiction of this cause...	1
Petitioner was not deprived of equal protection of the law.....	2

Authorities Cited.

Edelman v. California, 344 U. S. 357.....	2
Fay v. New York, 332 U. S. 261.....	3
People v. Ephraim, 411 Ill. 118.....	2
People v. Nordel, 414 Ill. 375.....	3

Statutes Cited.

Ill. Rev. Stat. 1953, chap. 78, par. 24-35 inclusive.....	2
Ill. Rev. Stat. 1953, chap. 78, par. 35.....	2

BLEED THROUGH POOR COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 729.

JOSEPH SICILIANO,

Petitioner,

vs.

STATE OF ILLINOIS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

I.

This Court Is Without Jurisdiction of This Cause.

In an attempt to comply with rule 23(f) petitioner states "the questions presented here were raised on assignments of errors in the record filed in the Supreme Court of Illinois." (Rec. 3, p. 83 of Abstract.)

Examination of page 83 of the abstract will show that no federal question was raised by petitioner and that the statement in the petition is erroneous. An examination of the record will show that neither in the trial court nor in the Supreme Court of Illinois did petitioner assert any federal question upon which the judgment and conviction must be set aside and a new trial granted. It should be noted that following the judgment of affirmance by the

Supreme Court the petitioner sought and obtained a rehearing in that court. The petition for rehearing contained in the record filed in this court discloses no assertion that Illinois deprived petitioner of a federal right.

Petitioner failed to give Illinois courts the opportunity to consider any federal question. Such failure is fatal to the petition here. This court is without power to decide whether constitutional rights have been violated when federal questions are not seasonably raised. (*Edelman* v. *California*, 344 U. S. 357.)

This is not a cause wherein a defendant has been convicted without an adequate defense. The record discloses that petitioner's counsel participated in every step of the proceedings in which petitioner was convicted and of the review of those proceedings. Further it has been noted that counsel for petitioner is a highly experienced and extremely able counselor in criminal matters. (*People* v. *Ephraim*, 411 Ill. 118, 122.)

II.

Petitioner Was Not Deprived of Equal Protection of the Law.

As petitioner points out, Illinois provides for jury commissioners in larger counties. (Ill. Rev. Stat. 1953, chap. 78, par. 24-35 inclusive.) The Jury Commissioner's Act is not in lieu of but is supplementary to the general statutes relating to the selection of jurors in Illinois. (*People* v. *Nordel*, 414 Ill. 375, 379.)

The general statute on jurors which has been in force since February, 1874 specifically authorizes the Sheriff to summon a sufficient number of persons to fill the panel *for the pending trial.*

Admittedly this was the procedure followed by the trial

BLEED THROUGH POOR COPY

court when petitioner was convicted. Nowhere does petitioner assert that any prejudice resulted to him as a result of the Sheriff's action in summoning bystanders.

Petitioner has never asserted and cannot assert that the jury commissioners failed to draw an adequate panel or that the panel as prepared by the jury commissioners discriminated against any person or class thereof. The decisions of this court cited by respondent are not in point and need not be discussed.

In *Fay* v. *New York*, 332 U. S. 261, this Court sustained a New York "blue ribbon" jury, in the selection of which the discretion of administrative officials charged with the duty of preparing jury panels wast exercised. Selection of jurors by the sheriff was the original common law mode of finding a jury. Unless it can be shown that the administrative official acted as a result of conscious bias, and discretion in selecting jurors is not bias unless that selection is used with a view of producing a particular verdict or with a view of excluding members of a particular racial, religious, political, economic or other group, there is nothing unconstitutional about the method whereby petitioner's jury was selected.

Conclusion.

In view of the foregoing, it is respectfully submitted that this is not a case in which the court should issue its discretionary writ of *certiorari*.

Respectfully submitted,

LATHAM CASTLE,
Attorney General of the State of Illinois,
Supreme Court Building,
Springfield, Illinois,
ROBERT C. NELSON,
State's Attorney of Lake County, Illinois,
Attorneys for Respondent.

JOHN L. DAVIDSON, JR.,
First Assistant Attorney General,
FRED G. LEACH,
WILLIAM C. WINES,
Assistant Attorneys General,
Of Counsel.